Here the learned District Judge had the owner of the lorry before him as a witness for the prosecution, and I am sure the Court below gave close attention to his evidence and demeanour before ordering forfeiture. But in his grounds of judgment the District Judge gave his reasons as follows:—

"It is clear from the evidence of the owner of the lorry (P.W.3) that he exercised very little control over the two accused as far as the use of the lorry was concerned. According to him accused No. 1 and No. 3 decided when a trip to Singapore was necessary and they could go down to Singapore in the lorry without his permission. In my view this was a fit and proper case to order the forfeiture of the lorry under Section 17(1) of the Proclamation and made an order accordingly. This confiscation would act as a deterrent to other owners of lorries so that they would exercise proper control over their employees and prevent the use of their lorries for illegal purposes."

Mr. Rintoul drew my attention to the case of *Cheng Kee Huat & Anor. v. Public Prosecutor*[3]. There Russell, J. found no dereliction of duty by the owner of the car (incidentally he was a party to that case), and went on to say forfeiture of the property of a completely innocent person could not act as deterrent to wrong-doers.

But I could by no means go so far in this case and assert that the owner *is* a completely innocent person. He asked the Court below to believe that although he constructed the lorry (lines 222-225) and formerly drove it, he did not know of the secret partition in the lockers — neither according to the record would the 1st nor 2nd appellant admit such knowledge until the lorry was stopped at Merlimau on the 2nd October, 1948.

If these proceedings had been under section 179 of the Customs Consolidated Act, 1876, and a boat involved instead of a lorry, the mere existence of a cunningly devised hiding place such as those in the lockers of this lorry (Exhibit P. 1) would be sufficient for mandatory forfeiture.

However, justice must not only be done, but appear to be done, and I do not think it readily appears to have been done if forfeiture is ordered against a person not a party to the particular case, and so without affording him a direct and unequivocal opportunity to show cause.

I can find no close precedent, but in *Tan Lian v. Rex*[4] Murray-Aynsley, C.J., said:—

"Before exercising this power of forfeiture the Court should, where it is practicable, give the owner of the property concerned an opportunity of showing cause why the order should not be made."

It is true that that judgment is from an appeal against forfeiture consequent upon an Essential Regulation contravention, but the principle is fair and I follow it.

To summarise my findings, the appeal of the 1st appellant as regards conviction and sentence is dismissed. The appeal of the 2nd appellant is allowed and he is acquitted and discharged. The present order of forfeiture of the lorry is set aside, but the seizure remains and the owner is to be afforded opportunity to appear before the Court below to show cause why the lorry should not be forfeited in accordance with the provisions of section 17(1) of the Opium and Chandu Proclamation. Due notice should be served upon the owner (section 17(2) of the said Proclamation), and if no appearance is entered within 14 days of the service of the notice the lorry *shall* be forfeited.

The confiscation of the opium is confirmed.

Order accordingly.

SULTAN OF JOHORE v. TUNGKU ABUBAKAR & ORS.

[Privy Council (Viscount Simon, Lord Porter, Lord Oaksey, Lord Radcliff, Sir Alfred Bucknill) April 22, 1952]

[Privy Council Appeal No. 45 of 1950]

Conflict of laws — Immunity of Sovereign — Waiver by submission to jurisdiction — Continuation of proceedings by way of appeal — Japanese Judgments and Civil Proceedings Ordinance, 1946, s. 3.

During the Japanese Occupation the Sultan of Johore applied to a Japanese constituted Court to set aside a settlement of land in Singapore; the Court found in his favour. After the re-occupation the respondents, claiming to be aggrieved by this order, applied to the High Court of Singapore under section 3 of the Japanese Judgments and Civil Proceedings Ordinance, 1946 to set aside the decree, alternatively to appeal against it. The Sultan applied for a stay of the proceedings on the ground that he was a sovereign ruler. The Summons in Chambers which was adjourned in open Court for argument in which it was sought to set aside an Originating Summons on the ground that the Court had no jurisdiction over the appellant who is a sovereign ruler was heard by Gordon-Smith, J., and his Lordship's decision is reported in (1949) M.L.J. 187. The Sultan appealed to the Court of Appeal and the appeal was dismissed. The decision of the Court of Appeal is reported in (1950) M.L.J. 3. On appeal to the Privy Council, —

Held, that (1) the Secretary of State having certified the Sultan was a foreign sovereign the matter must be considered conclusive; (2) nevertheless, as he had himself instituted proceedings in the Japanese Court and the present one was in the nature of an appeal, he having waived his immunity could not object to being made a respondent; his original submission bound him to accept the jurisdiction on appeal. The present proceedings were to determine whether the Japanese Court was right or wrong; and (3) it was not necessary to determine whether the immunity of a sovereign who had waived

it extended to a case involving title to immovables within the jurisdiction of the Court but their Lordships "do not consider that there has been finally established in England" (and hence in Singapore) "any absolute rule that a foreign independent sovereign cannot be impleaded in our Courts in any circumstances."

Cases referred to :—

(1) *The Charkieh* (1873), L.R. 4 A. & E. 59; 42 L.J. Adm. 17; 28 L.T. 513.

(2) *Duff Development Co. v. Kelantan Government* (1924) A.C. 797; 93 L.J. Ch. 343; 131 L.T. 676.

(3) *The Parlement Belge* (1880), 5 P.D. 197; 42 L.T. 273.

(4) *Compania Naviera Vascongado v. Cristina S.S.* (1938) 1 All E.R. 719; (1938) A.C. 485; 107 L.J.P. 1; 159 L.T. 394.

(5) *Lariviere v. Morgan* (1872), 7 Ch. App. 550; *revsd. on the facts,* H.L. *sub nom. Morgan v. Lariviere* (1875), L.R. 7 H.L. 432; 44 L.J. Ch. 457; 32 L.T. 41.

(6) *Burnswick (Duke) v. Hanover (King)* (1844), 6 Beav. 1 (49 E.R. 724); 13 L.J. Ch. 107; *affd.* H.L., (1848), 2 H.L. Cas. 1 (9 E.R. 993).

APPEAL from the judgment of the Court of Appeal, Singapore (Murray-Aynsley, C.J., Singapore, Sir H. C. Willan, C.J., Federation of Malaya, and Evans, J.) reported in (1950) M.L.J. 3.

C. P. Harvey, Q.C, *J. Megaw* and *E. Lauterpacht* for the appellant.

B. J. MacKenna, Q.C., and *I. C. Baillieu* for the respondents.

Sir Lionel Heald, Q.C., A.-G., and *Frank Gahan* (as *amici curiae*).

The judgment of the Board was delivered by :—

Viscount Simon :—This is an Appeal from the decision of the Court of Appeal of the Colony of Singapore (Murray-Aynsley, C.J., of Singapore, Sir H. C. Willan, C.J., of the Federation of Malaya, and Evans, J.) which arises in the following circumstances.

The appellant became Sultan of Johore, by succession to his father, in 1895. By an indenture dated December 1st, 1903, he purported to convey to his wife, in consideration of the natural love and affection which he bore to her, two plots of land belonging to him in Singapore with the dwelling houses erected thereon. On March 8th, 1926, the lady died intestate, leaving surviving her the appellant and their only son, Tunku Abubakar (hereinafter called Abubakar), who is the first respondent. Abubakar was granted letters of administration of his mother's estate : on her intestacy he was entitled to three-quarters of the estate and the appellant to one-quarter. An indenture dated December 22nd, 1926, between the appellant and Abubakar purported to convey these two properties to the appellant to hold upon trust for the eldest daughter of Abubakar during her life, and after her death for any of her issue then living. On March 1st, 1939, this eldest daughter died intestate, an infant and unmarried, and Abubakar was on January 23rd, 1940, granted letters of administration of her estate. By Mohammedan law, upon the girl's death intestate, her father, Abubakar, would become entitled to five-sixths of the properties and her mother, Ungku Fatimah, would be entitled to one-sixth. By an indenture dated June 28th, 1944, between Abubakar, Ungku Fatimah and three individuals named as trustees, Abubakar and his wife assigned and transferred to the trustees certain properties and interests in properties in Singapore and in Johore, including the two properties above mentioned.

In the course of the late war, the whole of Malaya (including Johore) and the Colony of Singapore were invaded and for a time occupied by Japanese military forces. Singapore itself was thus occupied on February 16th, 1942, and this occupation continued until the Japanese were driven out in September, 1945. On effecting their occupation the Japanese authorities expelled the British administration from Singapore : the Courts of that Colony were closed and the British judges interned. There had previously been a Supreme Court of the Straits Settlements, embracing Singapore, Penang and Malacca, which sat in Singapore : this was distinct from the Supreme Court of the Federated Malay States. The Supreme Court of the Straits Settlements had jurisdiction to decide the title to immovable property in Singapore. In May, 1942, the Japanese military administration set up, in place of the former Supreme Court of the Straits Settlements, a High Court called the "Syonan Kotohoin" staffed with judges appointed by the Japanese administration which exercised a jurisdiction generally corresponding with that belonging to the former Supreme Court of the Straits Settlements. The practice and procedure of the Syonan Kotohoin was, in all respects material to this Appeal, identical with the practice and procedure of the former Supreme Court of the Straits Settlements.

On May 3rd, 1945, the appellant took out an Originating Summons in the Court of the Judge at Syonan (Singapore), naming as Defendant the Custodian of

Enemy Property, Syonan. By this Summons he applied to the Japanese Court to determine the construction of the Deeds of December 1st, 1903, and of December 22nd, 1926, above referred to, and to decide whether, having regard to the fact that the parties to these Deeds were Mohammedans, the Deeds were properly and lawfully executed under the law applicable to the parties and were valid. The Summons was heard by one Pillai, a Japanese-appointed Judge of the Syonan Kotohoin. At the first hearing the Defendant was represented, but on the adjournment for argument his representative was absent.

Judgment in the appellant's favour was given by Pillai on June 18th, 1945, and it was declared that Mohammedan law was applicable to the gifts contained in the two Deeds and that the two gifts were void and of no effect, so that the properties with which they dealt reverted to the appellant as sole beneficial owner thereof.

When the Japanese were driven out in September, 1945, there followed a period during which authority was exercised by a British military administration, but on April 1st, 1946, a new and separate Colony of Singapore was created by the Singapore Colony Order in Council, 1946 (S.R. & O., 1946, No. 464) made under the Straits Settlements (Repeal) Act 1946. By section 14 of this Order in Council the Supreme Court of the Colony of Singapore was established, and it is this Court which has been functioning in the Colony of Singapore since that date.

Judicial proceedings which had been commenced before the Japanese occupation in the former Supreme Court of the Straits Settlements were linked with the newly created Supreme Court of the Colony of Singapore by section 44 of the Order in Council, which provided :—

"All proceedings (other than proceedings in the Prize Court) commenced before the 15th day of February, 1942, in any Court of Justice in or having jurisdiction in, the territory comprised in the Colony may be carried on in like manner as nearly as may be as if this Order and the Act of 1946 had not been made or passed, but in the corresponding Court of the Colony, and any such proceeding may be amended in such manner as may appear necessary or proper in order to bring it into conformity with the provisions of the Act of 1946 and of this Order."

It was considered necessary, as a consequence of the ending of Japanese occupation and the establishment of the Supreme Court of the Colony of Singapore, to provide an opportunity (1) for carrying on before the appropriate Court of the Colony proceedings which had been commenced but not concluded before a Japanese Court during the occupation, and (2) for reviewing decrees made by a Japanese Court in the appropriate Court of the Colony with a view to enabling an Appeal to be brought against such decree or with a view to setting aside such decrees as ought not to stand.

These objects were secured by the Japanese Judgments and Civil Proceedings Ordinance, 1946 (Singapore Ordinance No. 37 of 1946), the long title of which reads :—

"An Ordinance to make provision with regard to judgments, orders and decrees of Japanese Courts and for the carrying on of proceedings instituted in such Courts during the period of Japanese occupation."

Section 4 of this Ordinance provides :—

"(1) A party to any proceedings commenced before a Japanese court which were pending at the cessation of the Japanese occupation, may apply to the appropriate Court, within three months from the commencement of this Ordinance or such extended time as the appropriate Court may allow, for leave to carry on such proceedings as proceedings of the appropriate Court.

(2) Upon the hearing of the application the appropriate Court may order such proceedings to be carried on as though they had been instituted before the appropriate Court and may order such amendments and give such consequential or other directions in the matter as may seem just.

And section 3 of the Ordinance provides :—

"(1) Any party to the proceedings in which a Japanese decree was made or given or any person aggrieved by such decree may, within three months from the commencement of this Ordinance, or within such extended time as the appropriate Court may allow, apply in the prescribed manner to the appropriate Court for an order —

(a) that such decree be set aside either wholly or in part; or

(b) that the applicant be at liberty to appeal against such decree.

(2) Upon the hearing of an application under the provisions of sub-section (1) of this section the appropriate Court may, subject to the provisions of this section, make such order or orders thereon as, in the circumstances of the case, may seem just.

(3) No Japanese decree shall be set aside on the ground that the person or persons constituting the Court whose decree is in question was or were not appointed in accordance with the provisions of, or did not possess the qualifications specified in, the existing laws.

(4) Without prejudice to the generality of the provisions of sub-section (2) of this section, the Japanese decree may be set aside on any of the grounds following—

(a) that it was obtained as a result of such force or threat of force, injury or detriment to any party to the proceedings or other person as in the opinion of the appropriate Court was sufficient to render the action of the party in relation to the proceedings involuntary;

(b) that any necessary party did not appear personally but was represented by any person appointed by any Japanese authority;

(c) that it was based on principles unknown to the existing laws; or

(d) on any other ground which the appropriate Court consider to be sufficient."

Under this Ordinance Abubakar, the first respondent, together with the two other respondents as trustees, took out an Originating Summons in the High Court of the Colony of Singapore, claiming that

they were persons aggrieved by the decree of June 18th, 1945, of the Japanese Court in the appellant's favour, and applying to set aside this decree, or alternatively asking for liberty to appeal against the Japanese decree on grounds therein stated. Upon learning that the Originating Summons had been issued, the appellant's solicitors entered a conditional appearance on his behalf, which was followed up by a Summons before the Judge in Chambers, in which the appellant applied that the Originating Summons might be set aside and all further proceedings under it stayed on the ground that the Court had no jurisdiction over the appellant, who claimed to be "a sovereign ruler". It is the decision on this Summons which now comes before Their Lordships on appeal.

The appellant's application was heard in the High Court by Gordon Smith, J., in March 1949, and by Order dated April 7th, 1949, the Summons was dismissed with costs. The learned Judge held that at the material time the appellant was a sovereign ruler, but that he had waived his immunity by issuing the Originating Summons in the Syonan Kotohoin during the Japanese occupation. He held that the proceedings now sought to be stayed were not new proceedings, but were a continuation of the earlier proceedings in which the appellant had for the time being succeeded.

The appellant appealed from Gordon Smith, J.'s decision to the Court of Appeal of the Colony of Singapore. His Appeal was dismissed, but the reasons given by the three learned Judges materially differ and must be separately summarised.

Murray-Aynsley, C.J., held that the appellant's claim to be a sovereign ruler could not be established otherwise than by a statement made on behalf of His Majesty George VI to that effect and that the communications then before the Court from His Majesty's Secretary of State for the Colonies did not amount to such a statement. He further held that, if the sovereign status of the appellant had been duly established, there would have been no waiver by the appellant of his resulting immunity from the proceedings now taken against him by the respondents.

Sir H. C. Willan, C.J., on the other hand, held that, in a case where certificates from the Colonial Office were not conclusive one way or the other, the Court was not precluded from looking to other evidence in order to determine whether the appellant was an independent sovereign. He considered that the right view to take on all the material before him was that the appellant was an independent sovereign. On the question of waiver, however, he held against the appellant. Waiver of a sovereign's immunity, in a case where the sovereign has himself instituted proceedings, continued, in his view, to operate if the application now made by the respondents to reverse the decree which the appellant had obtained was a continuance of the proceedings instituted by the appellant in the Japanese Court. He held that the provisions of the Ordinance of 1946 above set out had the effect of making the present application a continuation of such proceedings, and therefore the claim by the appellant of immunity from the jurisdiction of the High Court of the Colony of Singapore failed.

The third Judge, Mr. Justice Evans, discussed the question whether other material can be considered on the question of sovereignty when there is no conclusive certificate from a Secretary of State before the Court. He held that the Syonan Kotohoin was not the same Court as that in which the respondents brought the present proceedings, and that the present proceedings were not the same as the proceedings started by the appellant. But his judgment was not based on his conclusion on these issues. The ground on which this learned Judge gave his decision against the appellant was that the appellant, notwithstanding his claim to be an independent sovereign and notwithstanding the view that he had not waived his immunity, was none the less subject to the jurisdiction of the Court inasmuch as the matter to be determined was "one concerning land, which is undoubtedly within the jurisdiction and which is the subject of a private and personal claim of the Sultan, and not a claim of public property of the State". Mr. MacKenna for the respondent cited various dicta, both English and foreign, in support of this view and referred in this connection to the statement of Sir Robert Phillimore (L.R. 4 A. & E.) at p. 97 of the *Charkieh*[1] a statement which was not in fact necessary for the decision — where that learned civilian stated that a sovereign's exemption from suit "is admitted not to apply to immovable property" and that this one of "the universally acknowledged exceptions to the general rule of the sovereign's immunity". As will appear hereafter, Their Lordships do not find it necessary to pronounce upon this proposition in the present Appeal.

There are thus three main questions which have been raised in this litigation, the answers to which may be material in deciding it.

First, is the appellant in this litigation to be regarded as a foreign sovereign? Secondly, if so, has he waived his immunity so as to disentitle him to a stay of proceedings on the respondents' Originating

Summons? And thirdly, if both the above questions are answered in the appellant's favour, does this sovereign immunity extend to exclude the jurisdiction of the Court in a case where proceedings are connected with his claim to be entitled to immovable property situate within the jurisdiction of the Court?

The first of these questions, which gave so much trouble to the Courts below, appears to Their Lordships to be now definitely answered in the appellant's favour. Subsequent to the Judgment and Order of the Court of Appeal, correspondence passed between twelve Rulers of the Malay States and the then Colonial Secretary in which the former complained that the replies hitherto sent from the Colonial Office in answer to the request of the Courts in Singapore for information as to the status of the appellant were ambiguous, and that the Secretary of State, instead of issuing the required certificate, appeared to wish to leave the Courts to decide the matter in the light of the recent establishment of the Malay Federation. However, on February 1st, 1951, the Secretary of State wrote a further letter to the Rulers of the Malay States in which it is categorically asserted that "His Majesty's Government regard Your Highnesses as independent sovereigns in so far as your relations with His Majesty are concerned".

At the hearing before the Board this document was tendered to Their Lordships, without objection from the respondents, as containing the necessary and conclusive information from the proper quarter. Their Lordships so accept it and take judicial notice of the fact so certified. They can therefore proceed on the admitted basis that the appellant was recognised by His Majesty's Government at the relevant time as an independent sovereign entitled to the immunities in respect of litigation which attach to that status.

This renders it unnecessary to decide in this Appeal a point on which some difference of opinion appears to be expressed in the speeches of the majority in *Duff Development Co. Ltd. v. Kelantan Government*[2], viz., whether the status enjoyed by a foreign sovereign in a British Court can be established, in case of doubt, only by certificate issued by the appropriate Secretary of State on behalf of the Crown, or whether a Court might be entitled, if the Crown failed to answer the inquiry in conclusive terms, to accept and act upon "secondary information" of another kind. (Contrast the speeches of Viscount Cave and Viscount Finlay with that of Lord Sumner.)

The second question concerns waiver. The appellant himself started the proceedings before the Japanese Court, thereby invoking its jurisdiction on his behalf. As plaintiff, he obtained the decree declaring that he was the beneficial owner of the properties in question. If, therefore, the steps taken by the respondents with a view to reversing this decision are in the nature of an appeal from it to a Court having jurisdiction to reverse the decision which the appellant has obtained, he could not object to being made respondent in these appeal proceedings, for his original submission to the original Court binds him to accept the jurisdiction on Appeal. If, on the other hand, the respondents' application to the High Court of the Colony of Singapore to reverse the decree is a "new" proceeding, and not a continuation of the previous one, the appellant's objection that he is a foreign sovereign would prevail, so far as the new proceeding impinged upon his sovereign immunity. In *Duff Development Company Limited v. Kelantan Government* (above cited), after the Kelantan Government, which was recognised by the British Crown as a sovereign state, had agreed to arbitration and had itself applied to the British Court to set aside the award, it was held that, when proceedings were taken against it to enforce the award, this was a different proceeding in which it was entitled to set up its sovereign immunity, notwithstanding that it had waived this immunity in the previous proceedings. Viscount Cave, (1924) A.C. at p. 810, put the contrast thus :—

> "The application for leave to enforce the award is a new proceeding, and though connected with the earlier application is distinct from it."

Here, as Willan, C.J., points out, the application of the respondents is concerned with the very matter raised by the appellant in the Japanese Court, viz. the title to these properties. Their Lordships are of opinion that section 3 of the Ordinance of 1946 upon its true construction authorises an application in the nature of an appeal from the Japanese decree. The Ordinance does not treat Japanese decrees as of no effect. Neither does it treat them as conclusive. It provides for their review, with the result that they might either be confirmed or modified or reversed. The procedure authorised is essentially a carrying on of the proceeding already instituted and not a new and distinct proceeding. The language of section 3 actually speaks of an Appeal, and the purpose of the Order is to provide a means of revising and, if necessary, correcting decrees made by the Japanese Court during the occupation. No doubt it is anomalous for a tribunal set up by one authority to operate as a Court of Appeal from the decisions of a tribunal set up by a different and previous authority, but this is

what the Ordinance of 1946 does, and sub-section (4) of section 3 indicates good and necessary reasons for doing it. Otherwise, an erroneous decision given by the Japanese Court affecting private rights would stand without the possibility of correction. In the present instance, the Japanese Court has decided, whether rightly or wrongly, that Deeds previously executed by the appellant which purported to convey his private property in Singapore to others were invalid and that the properties still belong to him. In deciding this issue, the proper law to apply to the question of title is the same as it was before the Japanese occupation, inasmuch as military occupation, and even annexation, does not in itself change the law in the area occupied; the only change is in the court and in the judges who are to apply the law. The question, therefore, which is raised by the Originating Summons issued by the respondents and which is to be determined by the High Court of the Colony of Singapore is whether the decision of the Japanese Court was right or wrong, and to determine this the appellant is made respondent in what is in substance an appeal in proceedings which, by force of the Ordinance of 1946, are a continuance of the proceedings which the appellant himself instituted, and in any case are put in the same position as an appeal by section 3.

The conclusion that the appellant must be treated as having submitted to the jurisdiction in the respondents' current proceedings makes it irrelevant to consider the third question which would otherwise have called for decision. That is the question whether the principle that affords to a foreign independent sovereign immunity from process in our Courts is subject to any exception in the case of proceedings that concern the title to immovable property situate within the area of the Court's territorial jurisdiction. The point was however very fully argued during the course of the hearing and moreover in view of its public importance their Lordships invited and received the assistance of the Attorney General to aid their consideration. While, therefore, they think that it would be wrong to express an opinion on an issue that does not, properly speaking, now arise, they are unwilling to conclude their advice to Her Majesty without making reference to one aspect of this controversy which was much canvassed before them.

Their Lordships do not consider that there has been finally established in England (from whose rules the rules to be applied in the court at Singapore would not differ) any absolute rule that a foreign independent sovereign cannot be impleaded in our Courts in any circumstances. It seems desirable to say this much having regard to inferences that might be drawn from some parts of the Court of Appeal's judgment in *The Parlement Belge*[3] and from the speech of Lord Atkin in *The Cristina*[4]. The word "implead" is capable of more than one meaning when used in relation to judicial proceedings which themselves comprehend a great variety of forms, and further distinctions have been suggested between what is direct and what is indirect impleading: but for the present purpose the definition of "impleading" can be taken to be that which is laid down by Sir Balliol Brett in the former case where he compares the position of a ship-owner, whose vessel is seized in proceedings alleging liability arising from a collision, with the position of a subsequent innocent purchaser of the vessel. The Lord Justice says at 5 P.D. p. 219:—

> "Either is affected in his interests by the judgment of a Court which is bound to give him the means of knowing that it is about to proceed to affect those interests and that it is bound to hear him if he objects. That is, in our opinion, an impleading."

Impleading, in this sense, does not depend merely on an answer to the more technical question whether a person is actually a party or ought to be regarded as a necessary party to the proceedings.

There have certainly been cases in the Court of Chancery in which a foreign sovereign has been impleaded to the extent that the rights to a trust fund under the jurisdiction of the Court have been the subject of adjudication despite the fact that the sovereign has a possible interest in the fund. The best known case is *Lariviere v. Morgan*[5]; and, although the decision in that case was reversed on its facts when it reached the House of Lords, Lord Cairns seems to have felt no doubt as to the propriety of the jurisdiction exercised; see his speech reported in L.R. 7 H.L. 423 at 430. Indeed, in *Duke of Brunswick v. King of Hanover*[6] Lord Langdale evidently contemplated that in proceedings of such a kind the name of the foreign sovereign would be included among those of the defendants (see 6 Beav. p. 39).

An action *in rem* against a ship impleads persons who are interested in the ship. That is settled law. There is even high authority for the view that such persons are or may be directly impleaded by such proceedings (*The Cristina*, (1938) A.C. at pp. 491, 505). If however it had been definitely determined that in no case could a foreign sovereign be impleaded without his consent, there could have been no justification for reserving the case of a Sovereign's ship engaged in ordinary commerce—a reservation that was in fact made by the majority of the House of Lords in *The Cristina*. For

a sovereign is impleaded by an action *in rem* against his ship, whether it is engaged in ordinary commerce or is employed for purposes that are more usually distinguished as public. The extent of the impleading is the same in the one case as in the other. Indeed, a great deal of the reasoning of the judgment in *The Parlement Belge* would be inexplicable if there could be applied a universal rule without possible exception to the effect that, once the circumstance of a foreign sovereign being impleaded against his will can be established, a proceeding necessarily becomes defective by virtue of that circumstance alone.

To say this is merely to disavow an alleged absolute and universal rule. It does nothing to throw doubt upon the existence of the general principle. Nor is it necessary for Their Lordships to express any opinion in this case upon the question whether and, if so, to what extent proceedings which concern the title to immovable property within the jurisdiction form an exception from this general rule.

Their Lordships will humbly advise Her Majesty that the Appeal should be dismissed. The appellant must pay the costs of the Appeal.

Appeal dismissed.

WONG SER SENG v. C. V. SANKARAN NAIR.

[App. Civ. Juris. (Storr, J.) May 10, 1952]

[J.B. — Civil Appeal No. 4 of 1952]

Landlord and tenant — Control of Rent Ordinance, 1948, ss. 13(1)(b) and 15(a) — Tenant under a contract — Termination of tenancy — Refusal of tenant to give up possession — Statutory tenancy.

In this case the learned Magistrate found that the appellant became a tenant of a portion of No. 65 (top floor) Jalan Tan Hiok Nee, Johore Bahru, by virtue of an agreement on 1st August, 1948, for a term certain of one year, at the end of which time the respondent granted the appellant, at his request, an extension of the term for 3 months. At the expiration of 3 months the appellant continued in possession of the premises.

The respondent took ejectment proceedings against the appellant. The appellant contended that he was a statutory tenant and therefore under the protection of the Control of Rent Ordinance.

Held, (1) that the appellant by not giving up possession at the end of the fixed term has not broken an obligation of the tenancy as envisaged by section 13(1)(b) of the Ordinance; and (2) that he became a statutory tenant by virtue of section 15(a) of the Ordinance and is entitled as such to the protection given by the Ordinance.

Cases referred to:—

(1) *Cruise v. Terrell* (1922) 1 K.B. 664 at p. 669.

(2) *Remon v. City of London Real Property Co. Ltd.* (1921) 1 K.B. 49 at p. 57.

(3) *Artizans Dwellings Co. v. Whitaker* (1919) 2 K.B. 304.

CIVIL APPEAL from Magistrate Johore Bahru.

C. L. Duff for the appellant.

P. V. Charry for the respondent.

Cur. Adv. Vult.

Storr, J. : — Briefly the facts found by the learned Magistrate in his judgment in this case were that the appellant became a tenant of a portion of No. 65 (top floor), Jalan Tan Hiok Nee, Johore Bahru, by virtue of an agreement on 1st August, 1948, for a term certain of one year, at the end of which time the respondent granted the appellant, at his request, an extension of the term for 3 months. At the expiration of the 3 months the appellant continued in possession of the premises.

After obtaining permission on the 31st December, 1950, from the Rent Assessment Board to take proceedings against the appellant, the respondent took action for the ejectment of the appellant. The matter in due course came before the learned Magistrate on the 10th June, 1951, and he on the 21st July, 1951, ordered the appellant to give up possession of the portion of the top floor of premises No. 65, Jalan Tan Hiok Nee, occupied by him to the respondent on or before the 31st October 1951. The appellant appealed against that order.

The appellant submitted that by continuing in possession after the term he became a statutory tenant and as such was entitled to remain in possession until his statutory tenancy was determined and he was ordered to give up possession by the Court.

It was argued by the respondent here and in the Court below that as the agreement for occupation was for a term certain and was extended for another term certain, i.e. 3 months, the appellant by continuing in possession of the premises at the end of the term agreed upon could not claim the protection of the Control of Rent Ordinance as a statutory tenant, but, as he had broken an obligation of the tenancy, by virtue of section 13(1)(b) of the Control of Rent Ordinance No. 6 of 1948, the respondent was entitled to possession of the premises.